IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.209 OF 2002

DATE OF DECISION: OCTOBER 23, 2006

Surinder Mohan and another

.....Petitioners

VERSUS

State of Punjab

....Respondent

CRIMINAL REVISION NO.375 OF 2002

Iqbal Singh and another

.....Petitioners

VERSUS

State of Punjab

....Respondent

CRIMINAL REVISION NO.376 OF 2002

Kharati Lal and others

.....Petitioners

VERSUS

State of Punjab

....Respondent

CRIMINAL REVISION NO.377 OF 2002

Pardeep Kumar and others

.....Petitioners

VERSUS

State of Punjab

....Respondent

CRIMINAL REVISION NO.378 OF 2002

Faqir Chand and another

.....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr. V. K. Chaudhary, Advocate for
Mr. C. M. Munjal, Advocate,
for the petitioners.

Mr. J. S. Chandail, AAG, Punjab,
for the State.

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RANJIT SINGH, J.

The abovesaid five revision petitions are filed against the same impugned order dated 25.9.2001 and are being disposed of by this common order.

Issue of limitation at the time of framing charge and continuation of criminal proceedings on the ground of arbitration clause have been agitated in the present revision petitions. Aggrieved against the order, directing framing of charge against the petitioners under Section 406 IPC, the abovesaid five revision petitions have been filed.

The grievance of the petitioners is that this charge could

not have been framed against them on account of period of limitation as prescribed under the Code of Criminal Procedure and also on the ground that arbitration proceedings, in terms of the agreement having been initiated, would not entitle the prosecution to put the petitioners to criminal trial as well.

The facts in detail need not be noticed as the issues raised are purely legal. Otherwise, the facts, necessary to get the hang of issues, taken from Criminal Revision No.209 of 2002, are that FIR No.125 dated 8.11.1999 was registered against the petitioners under Section 406 of the Indian Penal Code at the instance of PUNSUP. The petitioners had been issued 2685 bags of IR-8 variety of paddy and 56244 bags of PR-105 variety of paddy in the year 1994-95. They were supposed to shell rice out of the said paddy entrusted to them but could not do so in the stipulated time. Accordingly, PUNSUP had sold 47153 bags of paddy, out of the entrusted paddy, to the petitioners. Thus, a balance of 7773 Quintals of rice was due from the petitioners to PUNSUP. On 31.3.1997, a physical verification of the stock was done and shortage of the above quantity of rice was noticed on the ground that quantity of rice kept in the premises of the firm was of inferior rice and not the one that had been entrusted by the PUNSUP to the petitioners. It is claimed that this was not the case of a shortage but a dispute in regard to the quality of the rice. Relying upon an agreement between PUNSUP and the petitioners, which contained an arbitration clause, it was urged before the trial Court that criminal prosecution for an offence under Section 406 IPC cannot be continued, especially so, when the matter had already been referred to an Arbitrator in terms of the

agreement between the parties. The letter, through which the dispute had been referred to the Arbitrator, had also been placed on record before the trial Court but it is complained that the trial Court still framed the charges in a post-haste manner without properly applying its mind to the documents, especially the aspect of reference of the dispute to the Arbitrator. The framing of charge as such has been challenged on this as well as on the ground that cognizance in this case has been taken beyond the period of limitation of three years as prescribed under Section 468 of the Code. In this regard, it is claimed that the paddy was delivered in the year 1994-95 and the charges had been framed on 25.9.2001. It is the case of the petitioners that even if the date of physical verification was to be taken as the date of offence, then also the action of taking cognizance in this case is beyond the period of limitation as the charge had been framed on 25.9.2001 whereas the physical verification was done on 31.3.1997.

Criminal Revision No.209 of 2002 was filed in January 2002 and since then is pending adjudication.

I have heard the learned counsel for the parties.

Mr.Chaudhary, appearing for the petitioners, has based his submissions primarily on two grounds as noticed above. He has submitted that physical verification of the stock was done on 31.3.1997 whereas charge had been framed on 25.9.2001, which is beyond the period of limitation as prescribed under Section 468 of Code of Criminal Procedure. He has also submitted that no offence under Section 406 IPC would be made out in this case as the option of invoking arbitration clause has been exercised in this case. In this

regard, he has placed reliance on the judgement of Hon'ble Supreme Court reported as Balkrishan Dass Versus P.C.Nayar, 1991 (3) RCR 374 and Kailash Verma Vs. Punjab State Civil Supplies Corporation and another, 2005 (1) RCR (Criminal) 727.

On the other hand, learned State counsel controverted the submissions made by the counsel for the petitioners.

When would limitation commence, would be the first question requiring consideration, in view of the challenge raised by the petitioners. It may need a notice that there was no period of limitation provided for taking cognizance of an offence in the code of Criminal Procedure, 1898, which was repealed and now the provision in this regard has been made in the form of Chapter XXXVI. This Chapter comprises of Sections 467 to 473 Cr.P.C. Section 468 provides a period of limitation for taking cognizance of the offence. Rather, this Section lays down a bar for taking cognizance of an offence after lapse of a period of limitation as laid down in the Section. Section 469 Cr.P.C. then makes a provision in regard to commencement of period of limitation. These Sections reads as under:-

> "468. ***Bar to taking cognizance after lapse of the period of limitation.-*** (1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
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> (2)The period of limitation shall be-
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> (a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

© three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

469. ***Commencement of the period of limitation.-*** The period of limitation, in relation to an offence, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

© where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2)In computing the said period, the day from which such

period is to be computed shall be excluded."

For launching any prosecution, there has to be an offender and an offence and any prosecution cannot be launched in vacuum or against a non-entity. To set the prosecution in motion, there has to be an offence committed, a knowledge of its commission and identity of the one who has committed the offence. It is in this background that the provisions of Section 469, reproduced above, become relevant. Analyzing these, it can be seen that if an offence is not committed or though committed, it is not known by whom and for what crime, no prosecution can be instituted. Even if the offence becomes known, still the prosecution cannot be launched unless offender is identified. Accordingly, it can be said that for instituting a prosecution, three conditions are essential and these are (i) an offence has been committed; (ii) commission of offence become known and (iii) identity of the offender is revealed. In the absence of any of these requirements, the prosecution would be still born. It can be said that three clauses of Section 469 would deal with three different situations. As per this Section, period of limitation would commence under clause (a) of sub-section (1) from the date of offence if the offence as well as the identity of the offender is known. In other words, clause (a) presupposes the offence as also the identity of the offender. Clause (b) would apply when the offence comes to the knowledge of the person aggrieved of the offence or the police officer, whichever is earlier. This clause, as such, pre-supposes the identity of the offender. Similarly, clause (c) presupposes knowledge of offence and would apply from the date when the identity of the offender is known to the aggrieved person or

the police officer. Needless to mention that for computing the period of limitation, one has to take into consideration the date of offence upto the date on which the cognizance is taken by the Court. Applying the provisions of the Sections to the facts of the present case, one has to see, if the period of limitation, as prescribed under Section 468 Cr.P.C., when read in the light of provisions of Section 469 Cr.P.C. would have any effect to bar this prosecution on the ground of limitation. The contention of counsel for the petitioners that the date of physical verification i.e. 31.3.1997 is relevant for computing the period to determine limitation, on the face of it, is unacceptable. Admittedly, the physical verification of the stock was done on the said date. Even if some shortage was found, it would not mean that any offence of criminal breach of trust had surfaced. This is more so when seen in the light of averments made by the counsel for the petitioners that it is not the case of shortage. It has been pleaded by the petitioners that 7773 Quintals of rice was found lying in the premises of the firm but this was noticed to be of inferior quality. The offence of criminal breach of trust, thus, is not on account of any shortage but due to the fact that the quality of rice that was found in the premises of the firm, was not the one which had been entrusted to the firm but was of an inferior quality. This fact revealed on 31.3.1997. On that day, prosecution obviously would not have been in any position to firstly urge if there was any criminal breach of trust or was not in a position to know who would be responsible in this regard. It is clear that the investigation had further followed leading to registration of an FIR on 8.11.1999. It is, thus, obvious that the offence and the offender became known to the

authority aggrieved of the offence i.e. PUNSUP or any police officer on the date of registration of the FIR. Date March 31,1997 would not have any relevance for computing the period of limitation. Thus, determined it can be said that the action of taking cognizance in this case and framing of charge against the petitioners is well within the period of three years. The identity of the offence and the offender became known only on 8.11.1999 and charge in this case had been framed on 25.9.2001, which is clearly within the period of limitation of three years as prescribed under Section 468. Accordingly, this ground of attack raised by the petitioners deserves to be rejected. It is ordered accordingly.

The second submission raised by the petitioners that criminal prosecution as well as arbitration cannot be continued together also cannot be accepted. It is required to be seen if the ratio of the decision in Kailash Verma's case (supra) would be attracted in the facts and circumstances of this case or not. For that, it would be essential to understand the system of entrusting paddy for milling purposes. There are two types of rice which are milled by the millers and these are known as levy rice and custom milled rice. A difference between these two types of milling is required to be understood. Custom milling rice is the rice delivered by the millers to the Govt. of the paddy purchased by Govt. or its agencies and given to the millers for milling. Levy rice is a rice delivered by the millers to the Govt. out of the paddy purchased by them directly from the market in which they are required to give 75 % of the rice to the Government out of the paddy milled and purchased by them. It is thus clear that the paddy, which is supplied to the mills for custom

milling of rice is a property of the agency, which had supplied paddy and it is only entrusted to the mill for the purpose of milling. The mill is required to account for the rice and in case it is unable to do so, certainly it would expose itself to criminal liability, besides the civil liability that it may incur. In the State of Punjab, a scam known as "Rice Scam" received very wide publicity. The millers had apparently benefited to a huge extent by short supplying rice in return for the paddy that was entrusted to the Mills. This, of course, could not have been without the connivance of employees of agency. The rice scam was of multi facet in nature. It was found that in some cases, the price of the rice was more in the market than the rate at which this was required to be supplied to the government. The same was sold by the mills in the market. In these circumstances, it was very easy for the millers to urge that they were prepared to compensate the agency. In civil liability, they would still be gainers by paying dues of the agency. In some other cases, where it was found that the price of the rice was more if it was returned to the agency than the open market, then the millers resorted to mixing the custom milled rice with the levy rice and thus gained tremendously. All these issues are required to be adjudicated properly in a proceeding, which may be of a civil or criminal nature. The facts in the present case clearly revealed that a particular quality of paddy was entrusted to the petitioners and the firm was bound to return the rice after shelling the same. Once it has been found that the rice, which was noticed in the stock, was of an inferior quality, then obviously it would mean that the paddy, which was entrusted for shelling, has been mis-appropriated. It would be a matter of evidence to prove that the value

of the rice, which was required to be returned to the complainant, PUNSUP, was much more valuable than what is lying in the stock and it would now be very easy for the petitioners to compensate the complainant-PUNSUP and still be at advantage, having sold the high quality of rice in the open market at much higher rate. The civil liability would go into the aspect of loss, which the PUNSUP would suffer whereas the petitioners cannot be allowed to escape the criminal liability and responsibility for having breached the trust reposed in it by PUNSUP. These are distinguishable facts from Kailash Verma's case (Supra) and thus, it can be said that the ratio of this decision would not apply to the facts and circumstances of this case. Rather, this case seems to be covered by the ratio of decision in the case of Trisuns Chemical Industry v. Rajesh Agarwal and others, JT 1999 (6) S.C.618. In this case, the allegation of the complainant was that the Director-respondent had approached the appellant -Company for supply 5450 metric tones of “Toasted Soyabean Extractions” for a price of nearly four and a half crores of rupees. The appellant Company paid the amount through cheques. The commodity, which was supplied, was found to be most inferior and sub-standard quality. The complainant had suffered a loss of Rs.17 lacs from this consignment. After obtaining report in regard to the inferior quality of the consignment, the complaint was filed for initiating the criminal prosecution against the accused. The High Court had quashed this complaint on the ground that the dispute is purely of a civil nature and hence no prosecution should have been permitted. The same was taken in appeal before the Hon'ble Supreme Court. Noticing the judgment in the cases of State of

Haryana v. Bhajan Lal, JT 1990 (4) SC 650 and Rajesh Bajaj v. State NCT of Delhi JT 1999 (2) SC 112, the Hon'ble Supreme Court observed that “time and again this Court has been pointing out that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions.” In the case of Rajesh Bajaj (supra), the Hon'ble Supreme Court had observed that “merely because an act has a civil profile is not sufficient to denude it of its criminal outfit.” It would be a benefit to quote observations of Hon'ble Supreme Court in this regard:-

> “It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.”

In Trisuns Chemical Industry'case (supra), the Hon'ble Supreme Court specifically dealt with the filing of a criminal complaint in cases where there is an arbitration clause. In this regard, the Hon'ble Supreme Court observed as under:-

> “We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the

> discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in **Bhajan Lal v. State of Haryana (**Supra)."

It can thus be said that criminal prosecution and remedy by way of arbitration are two separate and distinct courses available to an aggrieved party. As noticed by the Hon'ble Supreme Court, arbitration is a remedy affording relief for breach of agreement and this cannot be a substitute for a criminal trial where the facts reveal commission of an offence, which may be arising out of the same sets of facts. As already noticed above, the arbitration clause in itself cannot lead to quashing all the proceedings and it would depend on facts and circumstances of the case. It has to be resorted to in an exceptional case as may have been done in the case of Kailash Verma (supra). The present case, in my considered opinion, would not fall under such extreme or exceptional case. Accordingly, the second contention raised by the petitioners also deserves to be rejected. So ordered.

The present revision as such is lacking in merit and is accordingly dismissed.

October 23, 2006 **(RANJIT SINGH)**
khurmi **JUDGE**